

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

## JAMES EMMETT FARR,

**Plaintiff,**

V.

DANIEL PARAMO, Warden, et al.,

## Defendants.

Case No.: 16-cv-1279-JLS (MDD)

**ORDER (1) ADOPTING REPORT  
AND RECOMMENDATION,  
(2) GRANTING MOTION TO  
DISMISS, AND  
(3) DISMISSING WITH PREJUDICE  
DEFENDANTS WALL AND SOTO**

(ECF Nos. 55, 57)

Presently before the Court is Magistrate Judge Michael D. Dembin's Report and Recommendation ("R&R," ECF No. 57). Magistrate Judge Dembin recommends that the Court grant Defendants' Motion to Dismiss ("Mot.," ECF No. 55). Plaintiff did not oppose the Motion and did not file any objections to the R&R. Having considered Magistrate Judge Dembin's R&R, the parties' arguments, and the law, the Court rules as follows.

## BACKGROUND

Magistrate Judge Dembin's August 18, 2017 Report and Recommendation and the instant R&R contain a complete and accurate recitation of the relevant portions of the factual and procedural histories underlying Defendants' pending Motion to Dismiss. *See*

1 ECF No. 35 at 1–7; R&R at 1–3. This Order incorporates by reference the background as  
2 set forth therein.

3 **LEGAL STANDARD**

4 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district  
5 court’s duties regarding a magistrate judge’s report and recommendation. The district court  
6 “shall make a de novo determination of those portions of the report . . . to which objection  
7 is made,” and “may accept, reject, or modify, in whole or in part, the findings or  
8 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(c); *see also*  
9 *United States v. Raddatz*, 447 U.S. 667, 673–76 (1980). In the absence of a timely  
10 objection, however, “the Court need only satisfy itself that there is no clear error on the  
11 face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory  
12 committee’s note (citing *Campbell v. U.S. Dist. Court*, 510 F.2d 196, 206 (9th Cir. 1974)).

13 **ANALYSIS**

14 Magistrate Judge Dembin recommends that the Court grant Defendants Wall and  
15 Soto’s Motion without leave to amend. *See* R&R at 5. This is because:

16 Wall and Soto were named as Defendants in the caption of the  
17 original Complaint[;] however[,] they are not mentioned in the  
18 body. . . . Plaintiff does not allege that Wall and Soto acted under  
19 color of law. Plaintiff has only named Defendants in the caption  
20 and referred to them in the exhibits. Plaintiff does not state in  
21 the body of the Complaint that Defendants have caused him  
22 injury, or that they deprived Plaintiff of any Constitutional rights.  
23 Therefore, Plaintiff has not established a valid claim against  
24 Defendants Wall and Soto. Plaintiff has had opportunities to  
25 amend his Complaint [to] assert facts against Defendants Wall  
26 and Soto and has not.

27 R&R at 4–5. The Court finds no clear error in Magistrate Judge Dembin’s  
28 recommendation. Consequently, the Court **ADOPTS** the R&R in its entirety and  
**GRANTS** the Defendants Wall and Soto’s Motion.

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## CONCLUSION

For the reasons stated above, the Court (1) **ADOPTS** Magistrate Judge Dembin's R&R (ECF No. 57), (2) **GRANTS** Defendants' Motion (ECF No. 55), and (3) **DISMISSES WITH PREJUDICE** the Complaint against Defendants Sergeant Wall and Lieutenant Soto.

Defendants Sergeant M. Ramrakha, Correctional Officer A. Hernandez, and Correctional Officer R. Bernard **SHALL FILE AN ANSWER** to Plaintiff's sole remaining Eighth Amendment claim within fourteen (14) days of the electronic docketing of this Order.

## IT IS SO ORDERED.

Dated: October 17, 2018

Janis L. Sammartino  
Hon. Janis L. Sammartino  
United States District Judge